

**OCCUPATIONAL SAFETY  
AND HEALTH STANDARDS BOARD**

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Attachment No. 2

INITIAL STATEMENT OF REASONS

## CALIFORNIA CODE OF REGULATIONS

TITLE 8: Chapter 4, Subchapter 7, Article 13,  
Section 3437 and new Section 3458 of the  
General Industry Safety Orders

Fall Protection for Date Palm OperationsSUMMARY

This rulemaking action was initiated at the request of the Division of Occupational Safety and Health (Division). The Division submitted a letter to the Occupational Safety and Health Standards Board (Board), dated November 17, 2000, outlining the need to develop specific regulations to address fall protection for workers relative to the activities of growing and harvesting of dates. Existing Title 8 regulations do not address the unique aspects of date palm operations, such as work performed in the crown of date palms. With the assistance of an advisory committee, this rulemaking action develops a new proposed Section 3458 in the GISO to address fall protection for date palm operations.

SPECIFIC PURPOSE AND FACTUAL BASIS OF PROPOSED ACTIONSection 3437. Definitions.

GISO Section 3437 provides the definitions related to Article 13, Agricultural Operations. The word "frond" is used in the language of proposed new Section 3458 and is proposed for addition to the definitions contained in Section 3437. The proposed revision is necessary to provide clarity to the requirements in proposed new Section 3458.

Section 3458. Fall Protection for Date Palm Operations.

Section 3458 is proposed to address the use of fall protection for workers that must access date palms for activities such as thinning, dethorning, pollinating, tying, bagging and harvesting of the date palm fruit.

#### Subsection (a)

Proposed subsection (a) requires that employees working in or on date palm trees be protected from falling greater than 7 ½ feet by the use of approved elevating work platforms, aerial devices or by the use of approved personal fall arrest, fall restraint or work positioning systems meeting the requirements of Section 1670 of the Construction Safety Orders. The subsection is necessary to establish the employer's duty to provide fall protection when employees are working at hazardous heights in date palm trees.

#### Subsection (b)

Proposed subsection (b) provides that lanyards used in a fall protection system be constructed of wire rope or chain when there is a hazard of cutting or damaging the lanyard. Proposed subsection (b)(1) requires that wire rope lanyards meet the minimum strength requirements contained in Section 1670 of the Construction Safety Orders (CSO). CSO Section 1670 outlines the strength requirements for fall protection system components and devices such as lanyards, lifelines, and anchor points. Proposed subsection (b)(2) requires that chains used in a fall protection system maintain a safety factor of at least 10. Members of the advisory committee determined that a safety factor of at least 10 provides the strength necessary to support personnel and any tools. A safety factor greater than 10, according to employers and employees that work in date palms, requires chains for use as lanyards that are too heavy and restrictive for effective completion of specific tasks. A note in subsection (b)(2) defines the term "safety factor". Proposed subsection (b) is necessary to ensure that effective and appropriate fall protection equipment and devices are used when work must be completed at hazardous heights in date palms.

#### Subsection (c)

Proposed subsection (c) addresses the use of date palm saddles, which are part of a custom built positioning device system used for work that is performed primarily below the crown of the date palm tree. Subsection (c) requires that a competent person design the date palm saddle and that the saddle be used in accordance with subsections (c)(1) – (3). Subsections (c)(1), (c)(2), and (c)(3) require that date palm saddles incorporate the use of an approved body belt; that lanyards be attached to at least two fronds; and that dead, decayed, or damaged fronds shall not be used for anchorage. Subsection (c) is necessary to ensure that date palm saddles provide appropriate fall protection when used as part of a positioning device system and that the system is appropriately and substantially anchored.

#### Subsection (d)

Proposed subsection (d) addresses the use of positioning device systems used in the crown of date palm trees and requires that these positioning device systems meet the provisions of subsections (d)(1) – (4). Subsection (d)(1) requires that lanyards be attached to at least two fronds. Subsection (d)(2) limits lanyards to a maximum length of 8 feet and requires that lanyards be rigged in such a manner that an employee cannot fall more than two feet. The maximum lanyard length of 8 feet is necessary to provide sufficient lanyard length to wrap

around the date palm trunk and fronds when a single lanyard system is used as part of a positioning device attached to a D-ring and body belt. Subsection (d)(3) prohibits the use of dead, decayed, or damaged fronds for anchorage. Two lanyard positioning device systems are also used in the crown of date palms with lanyards approximately up to 5 feet in length attached to a D-ring and body belt. Subsection (d)(4) requires that when changing work positions, at least one lanyard remains attached to provide fall protection at all times. The proposed subsection (d) is necessary to provide effective means and methods of fall protection for employees working in the crown of date palms.

#### Subsection (e)

Proposed subsection (e) requires a job briefing to be conducted before each work assignment begins. This provision is necessary so that employees are made aware of the hazards unique to a specific assignment including the work procedures necessary to ensure that the work is completed safely.

#### Subsection (f)

Proposed subsection (f) provides that prior to each use, a qualified person shall inspect fall protection equipment and any found to be defective shall be removed immediately from service. The regulation is necessary so that fall protection equipment is frequently inspected and in good operating condition to provide effective fall protection.

### DOCUMENTS RELIED UPON

Memorandum dated November 17, 2000 from John Howard, Chief, Division of Occupational Safety and Health with Cal/OSHA (form 9) attachments to John MacLeod, Executive Officer, Occupational Safety and Health Standards Board.

This document is available for review Monday through Friday from 8:00 a.m. to 4:30 p.m. at the Standards Board Office located at 2520 Venture Oaks Way, Suite 350, Sacramento, California.

### REASONABLE ALTERNATIVES THAT WOULD LESSEN ADVERSE ECONOMIC IMPACT ON SMALL BUSINESSES

No reasonable alternatives were identified by the Board and no reasonable alternatives identified by the Board or otherwise brought to its attention would lessen the impact on small businesses.

### SPECIFIC TECHNOLOGY OR EQUIPMENT

This proposal specifies the use of fall protection equipment when employees are working at hazardous heights to perform date palm operations such as thinning, pollinating and harvesting dates. Employers have been working with the Division of Occupational Safety and Health since the early 1980's to provide practical and effective fall protection equipment and methods consistent with accepted fall protection methods such as those provided in the Construction Safety Orders (CSO) Section 1670 and those regulations contained in the General Industry

Safety Orders, Article 12 pertaining to tree maintenance and removal operations. Date palm growers are already implementing the provisions contained in this rulemaking action and were instrumental in developing the proposal and consulting with the Division and Board staff to finalize the proposal. It is not expected that employers will need to implement new technologies or implement the use of fall protection equipment that is not already being provided and used by employees working in date palm trees.

### COST ESTIMATES OF PROPOSED ACTION

#### Costs or Savings to State Agencies

No costs or savings to state agencies will result as a consequence of the proposed action. The date palm industry is unique and limited to cultivation in desert-like areas of Southern California and the California/Arizona border. There are no state agencies involved in the cultivation of dates.

#### Impact on Housing Costs

The Board has made an initial determination that this proposal will not significantly affect housing costs.

#### Impact on Businesses

The Board has made an initial determination that this proposal will not result in a significant statewide adverse economic impact affecting businesses, including the ability of California businesses to compete with businesses in other states.

#### Cost Impact on Private Persons or Businesses

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

#### Costs or Savings in Federal Funding to the State

The proposal will not result in costs or savings in federal funding to the state.

#### Costs or Savings to Local Agencies or School Districts Required to be Reimbursed

No costs to local agencies or school districts are required to be reimbursed. See explanation under "Determination of Mandate."

#### Other Nondiscretionary Costs or Savings Imposed on Local Agencies

This proposal does not impose nondiscretionary costs or savings on local agencies.

### DETERMINATION OF MANDATE

The Occupational Safety and Health Standards Board has determined that the proposed regulations do not impose a local mandate. Therefore, reimbursement by the state is not required pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code because the proposed amendments will not require local agencies or school districts to incur additional costs in complying with the proposal. Furthermore, these regulations do not constitute a “new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.”

The California Supreme Court has established that a “program” within the meaning of Section 6 of Article XIII B of the California Constitution is one which carries out the governmental function of providing services to the public, or which, to implement a state policy, imposes unique requirements on local governments and does not apply generally to all residents and entities in the state. (County of Los Angeles v. State of California (1987) 43 Cal.3d 46.)

These proposed regulations do not require local agencies to carry out the governmental function of providing services to the public. Rather, these regulations require local agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, these proposed regulations do not in any way require local agencies to administer the California Occupational Safety and Health program. (See City of Anaheim v. State of California (1987) 189 Cal.App.3d 1478.)

These proposed regulations do not impose unique requirements on local governments. All employers - state, local and private - will be required to comply with the prescribed standards.

### EFFECT ON SMALL BUSINESSES

The Board has determined that the proposed amendments may affect small businesses.

### ASSESSMENT

The adoption of the proposed amendments to these regulations will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

### ALTERNATIVES THAT WOULD AFFECT PRIVATE PERSONS

No reasonable alternatives have been identified by the Board or have otherwise been identified and brought to its attention that would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.